



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2015-0197]**

**Hours of Service of Drivers: R&R Transportation Group; Application for Exemption**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from the R&R Transportation Group (R&R) for an exemption from the minimum 30-minute rest break requirement of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. The exemption would be available to R&R's drivers engaged in the transportation of materials that by their nature must be attended, such as radioactive materials, pharmaceuticals, and ammunition. The exemption would provide qualified drivers the same regulatory flexibility that the HOS regulations allow drivers transporting explosives, i.e. to use 30 minutes or more of attendance time to meet the HOS rest break requirements, provided they do not perform any other work during the break. FMCSA requests public comment on R&R's application for exemption.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2015-0197 using any of the following methods:

- **Federal eRulemaking Portal:** Go to [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.

- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Schultz, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; Telephone: 202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)), but only after the public is provided the opportunity to comment on the renewal.

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending the HOS regulations (49 CFR part 395) for drivers of CMVs. The final rule included a new provision requiring certain drivers to take a rest break during their duty day. Specifically, the rule states that “driving is not permitted if more than 8 hours have passed since the end of the driver’s last off-duty or sleeper-berth period of at least 30 minutes” [49 CFR §395.3(a)(3)(ii)]. This provision took effect on July 1, 2013.

Under the HOS rules, a driver is on duty if he or she is “performing any other work in the capacity, employ, or service of a motor carrier” (§395.2). A driver is off duty when relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo it may be carrying. However, the Agency has recognized that under certain circumstances it is unsafe for CMVs to be left unattended so that the driver can take 30 minutes off duty. By regulation, FMCSA allows operators of CMVs transporting certain explosives to satisfy the rest-break requirement by using 30 minutes or more of attendance time providing they perform no other work during the break [49 CFR 395.1(q)]. Drivers employing this provision are required to annotate their duty-status record to indicate that they have used the exception.

The Agency has granted requests for exemption from the 30-minute break requirement to drivers transporting security-sensitive radioactive materials (78 FR 32700, May 31, 2013) and weapons, munitions, and sensitive/classified cargo (80 FR 20556, April 16, 2015). FMCSA has extended § 49 CFR 395.1(q) to these drivers under certain terms and conditions.

### **Request for Exemption**

R&R operates three for-hire motor carriers that transport property in interstate commerce: R & R Trucking, Inc., USDOT 382936; TNI USA Inc. NC dba AATCO,

USDOT 513601, and NEI Transport, LLC, USDOT 676270 . R&R's application for exemption states that the goods it transports are of such a nature or value that its drivers must keep the CMV under constant observation to prevent theft or an adverse security incident. The application provides examples of the goods transported by R&R CMVs: weapons, ammunition, night-vision goggles, pharmaceuticals, and radioactive material. R&R maintains constant attendance of such loads in order to protect the public from a major security or hazardous material event. R&R states that Federal contracts often require CMV drivers to maintain constant surveillance of the vehicle, and may require the driver of an escort CMV to maintain constant surveillance as well. In addition, R&R states that the U.S. Department of Homeland Security may require surveillance as part of a security alert posted in the National Terrorism Advisory System, and that some Federal agencies, in response to a threat, establish a security threat zone, or geo-fence, restricting or barring further movement of an R&R CMV.

R&R requests an exemption from the HOS regulation pertaining to rest breaks [49 CFR 395.3(a)(3)(ii)] to allow R&R drivers providing surveillance services to be treated the same as CMV drivers attending explosives under § 395.1(q). R&R believes that transportation under the requested exemption would achieve a level of safety and security that is at least equivalent to what would be obtained by following the normal break requirements in § 395.3(a)(3)(ii). R&R states that if the exemption were granted, it would restrict its drivers of such CMVs from performing any other on-duty functions while satisfying the 30-minute break requirement. R&R states that it will require its drivers to record their rest breaks as on-duty time in accordance with §395.1(q), and to annotate such entries to indicate the specific on-duty periods used to satisfy the rest-break

requirement. R&R states that the Department of Defense provides documentation to CMV drivers to alert roadside inspectors of surveillance requirements.

R&R indicates that its three entities operate 255 power units and that 290 drivers would be covered by the exemption. The proposed exemption would be effective for 2 years, the maximum period allowed by § 381.300.

The processing of R&R's exemption request had been held in abeyance until it could be determined whether another exemption request [American Trucking Associations, Inc. (ATA), announced May 1, 2015 (80 FR 25004)] would make the R&R exemption unnecessary if approved. As requested, the ATA exemption was limited to transporters of certain hazardous materials and did not include some of the materials that R&R has requested to be covered by the exemption. Thus, R&R's request is now being considered independent of other requests.

### **Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on R&R's application for an exemption from certain provisions of

49 CFR part 395. The Agency will consider all comments received by close of business on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**.]. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

**Issued on: July 7, 2015.**

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Larry W. Minor,  
Associate Administrator for Policy.

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